

1
2
3
4
5
UNITED STATES DISTRICT COURT
6
EASTERN DISTRICT OF CALIFORNIA
7
8

9 ELUID JOSEPH MENDOZA,

Case No. 1:22-cv-01390-JLT-SKO

10 Plaintiff,

11 v.

**FINDINGS AND RECOMMENDATION
TO DISMISS FOR FAILURE TO
COMPLY WITH THE COURT'S
ORDERS AND FAILURE TO
PROSECUTE**

12
13 DOUBLEROAD TRUCK & BUS TYRES, et
al.,

(Docs. 5 & 6)

14 Defendants.

TWENTY-ONE DAY DEADLINE

15
16 /
17
18 On October 28, 2022, Plaintiff, proceeding *pro se* and *in forma pauperis*, filed the complaint
19 in this action. (Docs. 1 & 3.)

20 On February 10, 2023, the Court issued an order finding that Plaintiff's complaint failed to
21 state any cognizable claims and granting leave for Plaintiff to file an amended complaint, state that
22 he stands on his complaint, or file a notice of voluntary dismissal, within thirty days. (Doc. 5.)
23 Plaintiff did not pursue any of these options or request an extension of time in which to do so.

24 On March 17, 2023, an order issued for Plaintiff to show cause ("OSC") within twenty-one
25 days why the action should not be dismissed for his failure to comply with the Court's screening
26 order and for failure to prosecute this case. (Doc. 6.) Plaintiff was cautioned in both the screening
27 order and the OSC that the failure to take action and comply with the Court's orders would result in
28 a recommendation to the presiding district judge of the dismissal of this action. (*Id.* at 2; *see also*

1 Doc. 5 at 10.) Plaintiff has not yet filed any response, and the time to do so has passed.

2 The Local Rules of the United States District Court for the Eastern District of California,
3 corresponding with Rule 11 of the Federal Rules of Civil Procedure, provide, “[f]ailure of counsel
4 or of a party to comply with . . . any order of the Court may be grounds for the imposition by the
5 Court of any and all sanctions . . . within the inherent power of the Court.” E.D. Cal. L.R. 110.
6 “District courts have inherent power to control their dockets,” and in exercising that power, a court
7 may impose sanctions, including dismissal of an action. *Thompson v. Housing Authority of Los*
8 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure
9 to prosecute an action or failure to obey a court order, or failure to comply with local rules. *See*,
10 *e.g.*, *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply
11 with an order requiring amendment of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130
12 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d
13 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

14 Based on Plaintiff’s failure to comply with, or otherwise respond to, the screening order and
15 the OSC, there is no alternative but to dismiss the action for his failure to obey court orders and
16 failure to prosecute.

17 Accordingly, it is **HEREBY RECOMMENDED** that this action be dismissed for Plaintiff’s
18 failure to obey court orders and failure to prosecute this action.

19 These Findings and Recommendation will be submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1)(B). **Within twenty-**
21 **one (21) days** after being served with these Findings and Recommendation, Plaintiff may file
22 written objections with the Court. The document should be captioned “Objections to Magistrate
23 Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within
24 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
25 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

26

27

28

The Court DIRECTS the Clerk to send a copy of this Order to Plaintiff at his address listed on the docket for this matter.

IT IS SO ORDERED.

Dated: April 18, 2023

/s/ Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE